

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY Chum
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80684-5

NO. 34808-0-II

IN THE COURT OF APPEALS

STATE OF WASHINGTON

DIVISION II

PAUL W. POST

Appellant,

v.

CITY OF TACOMA; CITY OF TACOMA DEPARTMENT OF PUBLIC
WORKS BUILDING AND LAND USE SERVICES DIVISION; RISK
MANAGEMENT ALTERNATIVES INC.; and CHARLES SOLVERSON

Respondents.

APPELLANT'S ADDITIONAL BRIEF RE: RCW 3.50.020

ORIGINAL

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- A. RESPONSE TO ORDER FOR ADDITIONAL BRIEFING
DISCUSSING RCW 3.50.020.
- B. ARGUMENT.
 - 1. MUNICIPAL COURT OR DISTRICT COURT HAS
EXCLUSIVE ORIGINAL SUBJECT MATTER
JURISDICTION PURSUANT TO RCW 3.50.020 OR
RCW 7.80.010.

It is Appellant/Plaintiff's position that whether the City of Tacoma is required to bring action in municipal court, district court, or before the hearing examiner, Appellant/Plaintiff is entitled to his constitutional rights to procedural due process (i.e., adequate notice and a hearing on all civil infractions), substantive due process and the constitutional right to be free from excessive fining. RCW 3.50 states that municipal court has exclusive original jurisdiction over civil infractions for traffic violations. Respondent/Defendant admits that on the notices of \$250.00 per day civil infraction, there is no right to a hearing by the hearing examiner or in court. It is interesting to note that the city ordinances do not give jurisdiction to any tribunal (municipal, district, or other) since the City of Tacoma states Appellant/Plaintiff has no right to a hearing on the notices of \$250.00 per day civil infraction. Only the city inspector is given authority regarding the infraction notices (original and final jurisdiction). A hearing is necessary under due process concepts when a person is

deprived of a property interest as defined by state law. *Meyers v. Newport School District*, 31 Wn.App. 145, 639 P.2d 853 (1982). Had Appellant/Plaintiff been given the opportunity to be heard, certainly his claims would have arose from the City's ordinance. Because he was not given the opportunity to be heard pursuant to the ordinance or the notices of infraction, the ordinance and notices are invalid on their face.

Each and every notice of \$250.00 per day civil infraction does not comply with RCW 7.80.070. Subsection 2 states that the form for the civil infraction *shall* be prescribed by rule of the Supreme Court and *shall* include certain information, including options for responding and procedures necessary to exercise said options.

RCW 7.80.010 states that all violations of ordinances may be heard and determined by a district court, a municipal court, or by a city's own system established by ordinance. Municipal or district court commissioners are specifically given the authority to hear and determine civil infractions. RCW 7.80.010. Since municipal and district court commissioners are given the specific authority to hear and determine civil infractions, it was the intent of the legislature to exclude hearing examiners from possessing said authority. There is no other state statute with similar language granting authority to any other judge or hearing

examiner to hear and determine civil infractions. Even though RCW 7.80.010 (5) states, "Nothing in this chapter prevents any city, town or county from hearing and determining civil infractions pursuant to its own system established by ordinance.", it does not apply to the facts of this case. Appellant/Plaintiff never had a hearing since the City of Tacoma admittedly does not allow a hearing. The opportunity to a hearing regarding the validity of the civil infractions could not be determined by a hearing examiner in any event since Appellant/ Plaintiff's constitutional right to be free from excessive fining has been violated and a hearing examiner has no authority to make such a decision. In addition, the Washington Courts website (<http://www.courts.wa.gov>) by Washington State defines a hearing as, "an in-court proceeding before a judge, generally open to the public." A similar site for Michigan states that a hearing on a civil infraction is conducted "only by a district court judge."

RCW 3.50.020 appears to have exclusive original jurisdiction over traffic infractions and criminal violations of city ordinances. In addition, the statute specifically provides that the municipal court is empowered to hear and determine all causes, civil or criminal, arising under city ordinances and pronounce judgment in accordance therewith. With regard to the application of RCW 3.50.020, it is obvious that municipal court has

jurisdiction over civil infractions charged in the case at hand under city ordinances and to pronounce judgment in accordance therewith. Since there is no specific statutory authority granting a hearing examiner the specific authority to hear and determine civil infractions, municipal court or district court has exclusive original subject matter jurisdiction. RCW 7.80.010 (2) and (4). In the event the Court of Appeals determines the issues must be determined in municipal or district court, the charges must still be dismissed since the notices were inadequate and the statute of limitations has run. The City of Tacoma is not precluded from using a number of other enforcement actions such as charging criminally by creating a public nuisance and abating said nuisance and for charging specific code violations.

B. CONCLUSION.

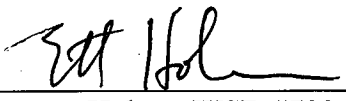
Appellant/Plaintiff ask this Court to reverse the trial court and hold Respondents'/Defendants' actions in fining Appellant/Plaintiff in violation of his constitutional rights in violation of the Washington State and U.S. Constitutions and are enjoined from the date of filing. In addition, Appellant/Plaintiff asks the Court to determine Defendants'/Respondents' fining in excess of authority given it by the State of Washington. In addition, Appellant/Plaintiff asks this Court to determine the actions by

Defendants/Respondents violate Appellant's/Plaintiff's civil rights in violation of 42 U.S.C. § 1983. Alternatively, Appellant/Plaintiff asks this Court to reverse the trial court on the issue of whether Respondent's/Defendant's fining is excessive as practiced or in the alternative remand for trial on the issue.

Respectfully submitted,

DATED:
April 27, 2007

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DECLARATION OF
SERVICE

Everett Holum states:

I, Everett Holum, attorney for Appellant in the above-entitled cause of

ORIGINAL

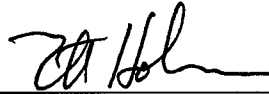
DECLARATION OF SERVICE - 1

action, over 18, competent to testify on the matters stated herein and do so based on personal knowledge.

On April 27, 2007, I filed an original and one true and correct copy of Appellant's Reply Brief and Declaration of Service at *The Court of Appeals of the State of Washington, 949 Market Street, Suite 500, Tacoma, Washington 98402*. In addition, I served one true and correct copy of Appellant's Reply Brief and Declaration of Service to *Ms. Debra E. Casparian at 747 Market Street, Rm 1120 Tacoma WA 98402-3767*.

I hereby declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

DATED at Tacoma, Washington, on April 27, 2007.



Everett Holum